

### REMARKS

Claims 1-28 and 30 are pending in the application. Claims 15-18, 22, 25-28, and 30 have been amended herein. Favorable reconsideration of the application, as amended, is respectfully requested.

#### I. REJECTIONS OF CLAIMS 15-28 AND 30 UNDER 35 U.S.C. § 112

Claims 15-28 and 30 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. It is noted that those skilled in the art would not deem the claim language of "will or will likely exceed ..." indefinite in view of the context set forth in the present specification. Nevertheless, in order to expedite the prosecution, Applicants have amended claims 15-18, 22, 25-28, and 30 herein to address the Examiner's concern. The amendments in no way narrow the claims. Withdrawal of the rejections is respectfully requested.

#### II. REJECTIONS OF CLAIMS 1-28 AND 30 UNDER 35 U.S.C. § 103

Claims 1-28 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,389,019 ("Fan") in view of U.S. Patent No. 6,621,792 ("Petty"). Applicants believe that all pending claims are allowable for at least the following reasons. Withdrawal of the rejections is respectfully requested.

The claimed invention relates to apparatus/methods for controlling data flow through a network using a plurality of time-based queues. Independent claim 1 requires, *inter alia*, that "each time-based queue is set to dequeue all of its contents ..." Other independent claims 12, 15, 25, 28, and 30 require recitations similar to those of independent claim 1.

As the Office Action admits, the Fan patent does not disclose the above-identified claimed feature. The Action cited the Petty patent as describing the claimed feature. Applicants respectfully disagree.

The Action specifically points to column 5, line 65 - column 6, line 4 of the Petty patent. The cited portion describes that "one of the queues 131 - the current queue - is emptied by dequeue state machine 141." However, the term "empty" does not necessarily mean dequeuing all of its contents as claimed. It merely connotes discharging at least some of the contents. In fact, there are many ways to "empty" the current queue including a cell-by-cell basis as suggested by the Petty patent.

Importantly, Petty's primary goal is to *ensure a minimum interval of 5.785 ms* between successive cells. In other words, the Petty system ensures that a circuit does *not exceed* its peak instantaneous cell rate of *one cell per 5.785 ms*. See, Petty, column 6, lines 54-58. Such a

limitation on an interval between successive cells is necessary in an ATM cell transfer context to avoid congestion.

In addition, the Petty patent explicitly states that only a single cell is dequeued from a queue at a time:

If it is not empty, the function dequeues *a cell* from that queue 131, at step 604, and sends *the dequeued cell* to physical layer 120 . . . . (Petty, column 7, lines 46-48, emphasis added.)

Applicants respectfully point out that the cited portions of the Petty patent do not show dequeuing *all of cells* from the queue 131. Rather, the patent merely describes dequeuing a single cell at one time.

Therefore, the Petty patent fails to teach or suggest the claimed feature, i.e., "each time-based queue [which] is set to dequeue all of its contents . . . ." As such, the Petty patent cannot be said to cure the deficiency of the Fan patent.

For at least the reasons set forth above, the invention defined in independent claims 1, 12, 15, 25, 28, and 30, and their dependent claims is believed to be patentable over the cited art. Withdrawal of the rejections is respectfully requested.

### III. CONCLUSION

Applicants believe that all pending claims are in condition for allowance, and respectfully request a Notice of Allowance at an early date. If the Examiner has any continuing concerns about patentability of the claimed invention, he is encouraged to telephone the undersigned at 510-663-1100, ext 245.

Respectfully submitted,  
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